

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

American Postal Workers Union, AFL–CIO, Local 1901 (United States Postal Service) and Anthoula Contogianni. Case 10–CB–231385

January 21, 2020

DECISION AND ORDER

BY MEMBERS KAPLAN AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that American Postal Workers Union, AFL–CIO, Local 1901 (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by Anthoula Contogiannis, an individual, on November 20, 2018, the General Counsel issued a complaint and notice of hearing on June 17, 2019, alleging that the Respondent has violated Section 8(b)(1)(A) of the Act.¹ The General Counsel reissued the same complaint on July 8 and issued an amendment to the complaint on August 30. The Respondent failed to file an answer.²

On August 22, 2019, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On August 23, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.³

¹ All dates are in 2019 unless otherwise stated.

² The General Counsel’s motion for default judgment and attached exhibits indicate that the complaint, the amendment to the complaint, and two reminder letters were served on the Respondent by both certified and regular mail. Although the certified mail receipts show that the Respondent’s certified mail copies of the complaint and the reminder letters were available for pickup but not retrieved, none of the copies sent by regular mail were returned as undeliverable, and the complaint was served in person to the Respondent on August 2.

It is well settled that a respondent’s failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003). Further, the failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *Id.*; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), *enfd. sub nom. NLRB v. Sherman*, 843 F.2d 1392 (6th Cir. 1988).

³ Chairman Ring, who is recused, is a member of the panel but did not participate in this decision on the merits.

In *New Process Steel v. NLRB*, 130 S.Ct. 2635 (2010), the Supreme Court left undisturbed the Board’s practice of deciding cases with a two-member quorum when one of the panel members has recused himself. Under the Court’s reading of the Act, “the group quorum provision [of Sec. 3(b)] still operates to allow any panel to issue a decision

Ruling on Motion for Default Judgment

Section 102.20 of the Board’s Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is received on or before July 22, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel’s motion disclose that the Region, by letter dated July 23, advised the Respondent that unless an answer was received by July 29, the Region may pursue a default judgment. By letter dated July 25, the Region corrected the date for receipt of an answer to July 30. By letter dated August 8, the Region again advised the Respondent that unless an answer was received by August 16, the Region may pursue default judgment. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel’s Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The United States Postal Service provides postal services for the United States and operates various facilities throughout the United States in performing that function, including a post office at issue in this proceeding located at 201 Piedmont St., Reidsville, North Carolina. We have jurisdiction over the Postal Service pursuant to Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101 *et seq.*

We find that the Respondent and American Postal Workers Union, AFL–CIO (the National Union) are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, John Harris has held the position of the Respondent’s President and Turnette Chestnut has held the position of the Respondent’s Shop Steward.

by only two members if one member is disqualified.” *New Process Steel*, 130 S. Ct. at 2644; accord *NLRB v. New Vista Nursing & Rehabilitation*, 870 F.3d 113, 127–128 (3d Cir. 2017); *D.R. Horton*, 357 NLRB 2277, 2277 fn. 1 (2012), *enfd. in relevant part*, 737 F.3d 344, 353 (5th Cir. 2013); *1621 Route 22 West Operating Co.*, 357 NLRB 1866, 1866 fn. 1 (2011), *enfd.* 725 Fed. Appx. 129, 136 fn. 7 (3d Cir. 2018).

Both have been agents of the Respondent within the meaning of Section 2(13) of the Act.

At all material times, by virtue of Section 9(a) of the Act, the National Union has been the exclusive representative of the following employees of the Postal Service:

All employees in the bargaining unit for which each has been recognized and certified at the national level, including maintenance employees, motor vehicle employees, postal clerks, special delivery messengers, mail equipment shops employees, material distribution centers employees, and operating services and facilities services employees; and excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work other than a purely non-confidential clerical capacity, security guards as defined in Public Law 91-375, 1201(2), all Postal Inspection Service employees, employees in the supplemental work forces as defined in Article 7 of the Collective Bargaining Agreement, rural letter carriers, mail handlers, and letter carriers.

Since about July 20, 1971, and at all material times, the Postal Service has recognized the National Union and its affiliated local unions on behalf of the National Union, including the Respondent, as the exclusive collective-bargaining representative of the unit.

At all material times, the National Union and the Postal Service have maintained and enforced a collective-bargaining agreement covering the terms and conditions of employment of the unit, including a grievance and arbitration procedure. That collective-bargaining agreement was effective on its face from May 21, 2015 through September 20, 2018. Before its expiration on September 20, 2018, the parties to the agreement extended it until agreement or interest arbitration on a successor contract.

Since about September 11, 2018, the Respondent has failed to process a grievance that unit employee Anthoula Contogiannis filed or attempted to file under the provisions of the collective-bargaining agreement described above, regarding her notice of removal and discharge from the Postal Service, and has failed to keep Contogiannis informed as to the status of her grievance. In doing so, the Respondent failed to represent Contogiannis for reasons that are arbitrary, discriminatory, or in bad faith, and has breached the duty of representation it owes to her and to the unit.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been restraining and coercing employees in the exercise of the rights guaranteed by Section 7 of the Act in viola-

tion of Section 8(b)(1)(A) of the Act and within the meaning of the Postal Reorganization Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent breached its duty of fair representation owed to Contogiannis in connection with the processing of her grievance in violation of Section 8(b)(1)(A) of the Act, we shall provide the remedy prescribed in *Iron Workers Local 377 (Alamillo Steel Corp.)*, 326 NLRB 375 (1998). Accordingly, we shall order the Respondent to promptly request that the Postal Service consider Contogiannis' grievance and, if the Postal Service does so, to process the grievance in accordance with the collective-bargaining agreement, including whatever settlement discussions or proposals may be consistent with the parties' processing of the grievance.

In addition, we shall order the Respondent to permit Contogiannis to be represented by her own counsel at any grievance proceeding, including any arbitration that the Respondent authorizes or other resolution proceedings that may follow from the Respondent's efforts on Contogiannis' behalf, and pay the reasonable legal fees of such counsel. Following exhaustion of any grievance processing in the prearbitration stage of the grievance procedure, the Respondent may exercise its discretion, consistent with its duty of fair representation, and decide in good faith whether to pursue the grievance to arbitration. If it is not possible to pursue the grievance based on the Postal Service's unwillingness to do so, and if the General Counsel shows in compliance proceedings that a timely pursued grievance would have been successful in arbitration, the Respondent shall (1) make Contogiannis whole for increases in damages, if any, suffered as a consequence of its failure to process her grievance in good faith as set forth in *Iron Workers Local 377 (Alamillo Steel Corp.)*, supra, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010),⁴ and (2) compensate Contogiannis

⁴ The General Counsel seeks a remedy requiring the Respondent to reimburse Contogiannis for *all* damages suffered rather than the increase in damages due to the Respondent's conduct. Because the relief sought would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. Cf. *H.O.P.E. Program*, 362 NLRB No. 128, slip op. at 2 fn. 1 (2015) (not reported in Board volume) (granting default judgment but denying

for any adverse tax consequences of receiving a lump-sum backpay award in accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014).

ORDER

The National Labor Relations Board orders that the Respondent, American Postal Workers Union, AFL-CIO, Local 1901, Reidsville, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Breaching its duty of fair representation by representing a unit employee in connection with her grievance arbitrarily or in bad faith.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly request the United States Postal Service to consider Anthoula Contogiannis' grievance and, if it agrees to do so, process the grievance with due diligence in accordance with the collective-bargaining agreement between the Postal Service and the Respondent.

(b) Permit Anthoula Contogiannis to be represented by her own counsel at any grievance proceeding, including arbitration or other resolution proceeding, and pay the reasonable legal fees of such counsel.

(c) In the event that it is not possible for the Respondent to pursue the grievance, and if the General Counsel shows in a compliance proceeding that a timely pursued grievance would have been successful, make Anthoula Contogiannis whole for any increases in damages suffered as a consequence of the Respondent's failure to process her grievance in good faith, in the manner set forth in the remedy section of this decision.

(d) In the event that Anthoula Contogiannis is awarded backpay pursuant to paragraph 2(c) above, compensate her for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

(e) Within 14 days after service by the Region, post at its union office and all other places where notices to members are customarily posted copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such

consequential damages as that remedy would require a change in Board law).

as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Within 14 days after service by the Region, deliver to the Regional Director for Region 14 signed copies of the notice in sufficient number for posting by the Postal Service at its Reidsville, North Carolina facility, if it wishes, in all places where notices to employees are customarily posted.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 10 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 21, 2020

Marvin E. Kaplan, Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT breach our duty of fair representation by representing a unit employee in connection with her grievance arbitrarily or in bad faith.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL promptly request the United States Postal Service to consider Anthoula Contogiannis' grievance and, if it agrees to do so, process the grievance with due diligence in accordance with our collective-bargaining agreement with the Postal Service.

WE WILL permit Anthoula Contogiannis to be represented by her own counsel at any grievance proceeding, including arbitration or other resolution proceeding, and WE WILL pay the reasonable legal fees of such counsel.

WE WILL, in the event that it is not possible for us to pursue the grievance, and if the General Counsel shows in a compliance proceeding that a timely pursued grievance would have been successful, make Anthoula Contogiannis whole for any increases in damages suffered as a consequence of the our failure to process her grievance in good faith, plus interest.

WE WILL, in the event that Anthoula Contogiannis is awarded backpay pursuant to the paragraph above, compensate her for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

AMERICAN POSTAL WORKERS UNION,
AFL-CIO, LOCAL 1901

The Board's decision can be found at www.nlrb.gov/case/10-CB-231385 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

